

James D. Veltrop (JV6620)
 Jonathan A. Harris (*pro hac vice*)
 Chad A. Landmon (CL4807)
 Denise V. Zamore (*pro hac vice*)
 AXINN, VELTROP & HARKRIDER LLP
 90 State House Square
 Hartford, CT 06103
 (860) 275-8100 (Telephone)
 (860) 275-8101 (Facsimile)
Attorneys for Defendant and Counterclaim Plaintiff
Actavis Totowa LLC

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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|-----------------------------------------|---|-----------------------------------|
| In re: |) | 04-md-1603 (SHS) |
| OXYCONTIN ANTITRUST LITIGATION |) | This document relates to: |
| PURDUE PHARMA L.P., |) | |
| THE P.F. LABORATORIES, INC., and |) | |
| PURDUE PHARMACEUTICALS L.P., |) | |
| Plaintiffs and Counterclaim Defendants, |) | Civil Action No.: 1:07 Civ. 03972 |
| |) | (SHS) |
| v. |) | |
| KV PHARMACEUTICAL COMPANY and |) | |
| ACTAVIS TOTOWA LLC, |) | |
| Defendants and Counterclaim Plaintiffs, |) | |
| |) | |
| v. |) | |
| THE PURDUE FREDERICK COMPANY, |) | |
| THE PURDUE PHARMA COMPANY, and |) | |
| EUROCELIQUE S.A., |) | |
| Counterclaim Defendants. |) | |
| |) | |

**ACTAVIS TOTOWA LLC'S MEMORANDUM IN SUPPORT
 OF THE UNENFORCEABILITY OF U.S. PATENT NO. 5,508,042**

In accordance with the Court's instructions during the July 12, 2007 Status Conference, defendant and counterclaim plaintiff Actavis Totowa LLC ("Actavis") hereby submits this memorandum in support of the unenforceability of U.S. Patent No. 5,508,042 ("the '042 patent"), the only patent asserted by plaintiffs and counterclaim defendants Purdue Pharma L.P., The P.F. Laboratories, Inc. and Purdue Pharmaceuticals L.P. (collectively "Purdue") against Actavis in this proceeding. Specifically, the Court should enter judgment finding the '042 patent to be unenforceable due to Purdue's inequitable conduct before the U.S. Patent & Trademark Office ("PTO").

For the sake of efficiency, Actavis adopts the arguments set forth in the briefs submitted by KV Pharmaceutical Company ("KV") and Mallinckrodt Inc. ("Mallinckrodt") in this proceeding and the following briefs previously filed in related proceedings: (1) Endo's Opening Brief Following Remand, 00-cv-8209 (SHS) (Docket Entry No. 145); (2) Endo's Reply Brief Following Remand, 00-cv-8209 (SHS) (Docket Entry No. 149); (3) Defendant Counterclaimant Boehringer Ingelheim's Brief in Support of its Contention that Purdue Pharma's U.S. Patent Nos. 5,549,912, 5,508,042 and 5,656,295 are Unenforceable as a Result of Inequitable Conduct, 99-cv-3658 (SHS) (Docket Entry No. 170); (4) Reply Brief of Defendant Counterclaimant Boehringer Ingelheim in Support of its Contention that Purdue Pharma's U.S. Patent Nos. 5,549,912, 5,508,042 and 5,656,295 are Unenforceable as a Result of Inequitable Conduct, 99-cv-3658 (SHS) (Docket Entry No. 172); (5) Corrected Brief of Defendant and Counterclaim Plaintiff Impax Laboratories, Inc. in Support of Finding of Unenforceability Based on Inequitable Conduct, 04-md-1603 (SHS) (Docket Entry No. 112); and (6) Reply of Defendant and Counterclaim Plaintiff Impax Laboratories, Inc. in Support of Finding of

Unenforceability Based on Inequitable Conduct, 04-md-1603 (SHS) (Docket Entry No. 129).

Actavis reserves its right to file a reply brief in response to any briefs filed by Purdue on the inequitable conduct issues. Actavis also reserves its right to participate in any oral argument or hearing on these issues.

WHEREFORE, Actavis respectfully requests the Court to enter judgment finding that the '042 patent is unenforceable due to Purdue's inequitable conduct before the PTO.

Dated: September 21, 2007

Respectfully submitted,

By: /s/ Chad A. Landmon
James D. Veltrop (JV6620)
Jonathan A. Harris (*pro hac vice*)
Chad A. Landmon (CL4807)
Denise V. Zamore (*pro hac vice*)
AXINN, VELTROP &
HARKRIDER LLP
90 State House Square
Hartford, CT 06103
(860) 275-8100 (Telephone)
(860) 275-8101 (Facsimile)

*Attorneys for Defendant and
Counterclaim Plaintiff
Actavis Totowa LLC*

CERTIFICATE OF SERVICE

I hereby certify that on September 21, 2007, a true and correct copy of the foregoing document was filed electronically and is available on the ECF system for downloading. I also certify that on September 21, 2007, I caused a copy of the above documents to be served on the counsel listed below via electronic mail and first-class mail, postage prepaid:

John J. Normile
JONES DAY
222 East 41st Street
New York, NY 10017

Herbert F. Schwartz
Denise L. Loring
Richard A. Inz
Pablo D. Hendlar
ROPES & GRAY LLP
1211 Avenue of the Americas
New York, NY 10036

Robert J. Goldman
ROPES & GRAY LLP
525 University Avenue Suite 300
Palo Alto, CA 94301
*Attorneys for Purdue Pharma L.P., The
P.F. Laboratories, Inc. and Purdue
Pharmaceuticals L.P.*

John F. Sweeney
Joseph A. Girolamo
Seth J. Atlas
Andrea L. Wayda
Matthew K. Blackburn
MORGAN & FINNEGAN LLP
3 World Financial Center
New York, NY 10281
*Attorneys for KV Pharmaceutical
Company*

Allen C. Wasserman
LORD, BISSELL & BROOK LLP
885 Third Avenue, 26th Floor
New York, NY 10022

Hugh L. Moore
Keith D. Parr
Scott B. Feder
LORD, BISSELL & BROOK LLP
111 South Wacker Drive
Chicago, IL 60606
Attorneys for Mallinckrodt Inc.

/s/ Denise V. Zamore
Denise V. Zamore